Supreme Court, U. S.
FILED
MAR 26 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

873 & 890

No. ...., October Term, 1940.

Lehigh Valley Railroad Company,
(Plaintiff-Appellee in the Court Below),
Petitioner,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey, *et al.*,
(Defendants-Appellants in the Court Below),
Respondents.

(And 17 Other Cases as Listed on Inside Cover.)

PETITION AND BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

Maximilian M. Stallman,
Counsel for Petitioners,
810 Broad Street,
Newark, N. J.

Maurice Bower Saul,
Richard W. Barrett,
Jacob Aronson,
Herbert A. Taylor,
Douglas Swift,
Of Counsel.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton St., Newark, N. J., U. S. A.

(Cases continued from Front Cover)

	Years (1934)	(1935)	(1936)
	C. C. A. numbers		
D. L. & W. R. R. Co. vs. *Martin, et als.*	7349	7357	7365
Erie R. R. Co. vs. *Martin, et als.*	7350	7358	7366
Lehigh Valley R. R. Co. vs. *Martin, et als.*	7351	7359	7367
N. J. & N. Y. R. R. Co. vs. *Martin, et als.*	7352	7360	7368
New York Central R. R. Co. vs. *Martin, et als.*	7353	7361	7369
N. Y. & Long Branch R. R. Co. vs. *Martin, et als.*	7354	7362	7370

INDEX.

	PAGE
PETITION FOR WRIT OF CERTIORARI	1
SUMMARY STATEMENT OF MATTER INVOLVED	2
THE QUESTIONS PRESENTED	4
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS	5
PRAYER	6
CERTIFICATION	8
BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI	9
Opinions of the Courts Below	9
Jurisdiction	9
Statement of the Case	9
Specification of Errors to be Urged	9
Summary of Argument	10
ARGUMENT:	
I. A tax valuation of railroad property made with entire disregard of the earnings of the property and resulting in grossly excessive values violates the due process clause of the 14th Amendment to the Constitution of the United States	10
II. The Judgment of the Court of Appeals is in conflict with applicable Decisions of this Court and of another Circuit Court of Appeals	21

PAGE

III. The instant cases are sharply distinguishable from the case of *Nashville, etc. R. Co.* v. *Browning*, 302 U. S. 362 23

IV. Section 265 of the Judicial Code (USCA 379) does not apply to these cases 25

V. The suits are not against the State of New Jersey within the purview of the Eleventh Amendment 28

VI. The issues are not *res judicata* 31

CONCLUSION 34

Table of Cases.

PAGE

Bailey v. *Megan*, 102 Fed. 2nd, 651 ..... 6, 21, 22

Central Railroad Company, etc. v. *Martin*, 114 N. J. L. 69 ..... 4, 9, 10, 31

Central R. R. v. *State Board of Assessors*, 49 N. J. L. 1 28

Cleveland, C. C. & St. L. Ry. Co. v. *Backus*, 154 U. S. 439 ..... 13, 15

Continental Ill. Nat. Bank, etc. v. *Chicago, I. R. & P. Ry. Co.*, 294 U. S. 648, 671 ..... 12, 23

Cromwell v. *County of Sac*, 94 U. S. 351, 352 33

Ex parte Young, 209 U. S. 123, 130 29

Franklin County v. *Nashville, etc., Ry. Co.*, 12 Lea (Tenn.) 521 14

Great Northern Ry. Co. v. *Weeks*, 297 U. S. 135, 4, 6, 13, 16, 18, 19, 20, 21, 22, 31

In re Walker Grain Co., 294 Fed. 951 25

Iowa-Des Moines Bank v. *Bennett*, 284 U. S. 239, 245-47 29

Looney v. *Crane*, 245 U. S. 178 29

Mississippi, etc. Com. v. *Ill. Cent. Ry. Co.*, 203 U. S. 335 27

Nashville, etc. Ry. Co. v. *Browning*, 319 U. S. 362, 4, 5, 11, 18, 19, 20, 21, 23, 24, 25

Pacific T. & T. Co., 2 Fed. (2nd) 151 26

Pittsburgh, etc. Ry. Co. v. *Backus*, 154 U. S. 421, 430 14

Prentis v. *Atlantic Coast Line*, 211 U. S. 210 27

Rawley v. *Chicago, etc. R. Co.*, 293 U. S. 102 31

Reagan v. *Farmers Loan & T. Co.*, 154 U. S. 362, 399 .. 28, 29, 30

Smyth v. *Ames*, 169 U. S. 566, 547 15

Southern Ry. Co. v. *Kentucky*, 274 U. S. 76, 81 15

PAGE

Southern Ry Co. v. *Greensboro, etc. Co.*, 202 U. S. 543 27
State Board, etc. v. *Central R. Co., etc.*, 48 N. J. L. 146, 278 ..... 11, 13
State of Illinois v. *Illinois Central Railroad*, 27 Ill. 64, 68 13

United N. J. R. R. Co. v. *State Board*, 101 N. J. L. 30 33

Wells Fargo & Co. v. *Taylor*, 254 U. S. 175, 182..... 25
West v. *Chesapeake & P. Tel. Co.*, 295 U. S. 662, 672 12
Western Union T. Co. v. *Myatt*, 98 Fed. 335..... 27
Worcester Trust Co. v. *Riley*, 302 U. S. 292..... 29, 30

STATUTES.

Judicial Code, Section 240, as last amended by Act of June 7, 1934, 48 Stat. at L. 926, 28 U. S. C. Sec. 347 9

Section 265 (USCA Sec. 379)..... 10, 25

Constitution of New Jersey, Article IV, Sec. VII, Par. 12 (1 N. J. Comp. Stat. LXXXVI)..... 10

General Tax Act, P. L. 1919, pp. 847, 859 (N. J. Rev. St. 1937, Sec. 54:4-1)..... 11

Railroad Tax Act, P. L. 1884, p. 142, 1888, p. 269 (N. J. Rev. St. 1937, Sec. 54:22-1)..... 11

N. J. Rev. St. 1937, Sec. 54:28..... 26

IN THE

Supreme Court of the United States

No. ...., October Term, 1940.

Lehigh Valley Railroad Company,
(Plaintiff-Appellee in the Court Below),
Petitioner,

v.

J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, *et al.*,
(Defendants-Appellants in the Court Below),
Respondents.

(And 17 Other Cases as Listed on Inside Cover.)

PETITION FOR WRITS OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully pray that writs of certiorari may issue to review decrees of the United States Circuit Court of Appeals for the Third Circuit in the cases listed on the cover. The decrees were filed November 27, 1940 (rehearing denied January 24, 1941), and reversed judgments of the United States District Court for the District of New Jersey which had held certain tax assessments for the years 1934, 1935, and 1936 to be arbitrary, unlawful, excessive, and unconstitutional, and had enjoined defend-

ants (State Tax Commissioner, Treasurer, and Attorney General, of New Jersey) from enforcing collection of more than seventy per cent of the taxes levied thereon, without prejudice to any right to revalue and tax the property according to law. As the cases were argued together and disposed of by one opinion of the court below, only one petition is filed[a].

Summary Statement of the Matters Involved.

For each of the tax years 1934, 1935 and 1936, the railroad properties in New Jersey operated by the several petitioners were assessed at valuations which the petitioners claimed to be arbitrary and grossly excessive.

The State Tax Commissioner valued the railroad lands of petitioners, located in the State of New Jersey, on the basis of the value of non-railroad contiguous lands and all railroad improvements (grading, fill, rails, ties, bridges, signals, structures, etc., etc.) on the basis of estimated original costs less physical depreciation. No consideration whatsoever was accorded other elements of value, such as earnings. Having exhausted their administrative remedies without avail, the petitioners filed suits in the United States District Court, alleging that the valuations, on which the taxes were computed, were arbitrarily and improperly made and grossly excessive, thus depriving petitioners of their property in violation of the Fourteenth Amendment

---

[a] Since these proceedings were instituted the following companies have been placed in the hands of trustees under section 77 of the bankruptcy act:

Erie Railroad Company, and
New Jersey & New York Railroad Company; also
New York, Susquehanna & Western Railroad Company, and
Central Railroad Company of New Jersey (parties to the proceedings below, but not to this present petition).

and constituting an undue burden on interstate commerce. The petitioners prayed for injunctions against the threatened enforcement of such percentage of taxes predicated on these valuations as was found to be excessive and illegal.

Evidence introduced by the petitioners, including testimony of fact and expert witnesses and complete statistical and other data in the form of exhibits, showed the true value of the properties to be one-third to one-half of the assessments for the years in question (R. I,* 37, 50 *et seq.*). The defendants did not produce any evidence (other than the assessments themselves) purporting to show the value of the several properties or purporting to support the assessed valuations.

The District Court filed findings of fact (R. I, 83); and conclusions of law (R. I, 89), in connection with its opinion (R. I, 13), holding that the assessment valuations were arbitrarily made in disregard of the earnings of the respective railroad properties; and that they "are arbitrary, capricious, basically unsound, and so grossly excessive as to amount to constructive fraud", and constitute a denial of due process of law (R. I, 91). The District Court also held that the plaintiffs (petitioners) were entitled to injunctions with respect to 30% of the taxes levied, pending correction of the assessments on a lawful basis.

There were also involved certain special defenses interposed by defendants, upon which the District Court ruled (R. I, 89) that

(a) the actions instituted by plaintiffs were not brought to restrain proceedings in a state court within the meaning of section 265 of the Judicial Code (28 USCA 379);

---

* The transcript is contained in four volumes, and in each instance where reference is made to the Record the volume is indicated by Roman numeral.

(b) the actions are not against the State of New Jersey within the purview of the Eleventh Amendment to the Constitution;

(c) the issues were not *res adjudicata* by reason of a judgment of the state court in an action involving assessments for an earlier year.

The Circuit Court of Appeals, Third Circuit, reversed the judgments of the District Court and remanded with instructions to dismiss the complaints on the ground that the case of *Nashville, etc. Ry. Co.* v. *Browning,* 319 U. S. 362, had in effect overruled the earlier decision in *Great Northern Ry. Co.* v. *Weeks,* 297 U. S. 135, and thereby closed the doors of the Federal Courts to any grievance founded on arbitrary and excessive tax assessments. The Circuit Court of Appeals on the collateral issues mentioned above further held that these suits were barred by Section 265 of the Judicial Code because their purpose was to restrain proceedings in a state court; that the suits were in effect against the State of New Jersey and therefore prohibited by the Eleventh Amendment; and that the issues were *res adjudicata* because the New Jersey Supreme Court in *Central Railroad Company etc.* vs. *Martin,* 114 N. J. L. 69 (a case involving alleged excessive assessments for 1933), had adjudicated similar issues relating to the valuations for that year adversely to the petitioners.

The Questions Presented Are:

1. Does the valuation of railroad property without regard to its earning power, resulting in excessive assessments, constitute arbitrary valuation and a denial of due process of law?

2. When state officials have valued and taxed railroad property in an alleged arbitrary manner at excessive amounts and serve notice on the owner of intention to obtain an order from a judge to sell such property for such taxes, prior to a judicial inquest as to their validity, are such contemplated or threatened steps within the meaning of Section 265 of the Judicial Code, providing that injunction shall not issue to stay proceedings in a state court?

3. Is a suit against administrative officers to prevent the sale of railroad property for taxes based on alleged arbitrary and excessive valuations a suit against a state and so prohibited by the Eleventh Amendment to the Constitution?

4. Where a state court has held that a complainant has failed to prove allegations of excessive assessments of railroad property for a particular year, does such judgment sustain a plea of *res judicata* in subsequent actions instituted in a Federal Court by the same parties with respect to assessments in different amounts for later years?

Reasons for Granting the Writ.

1. These cases present important open questions of law, and the issues are of such a grave and serious character as to justify the consideration and judgment of this court.

2. The Circuit Court of Appeals has erred in construing the opinion of this Court in *Nashville, etc. Ry. Co.* v. *Browning,* 310 U. S. 362, as having in effect overruled the

earlier opinion of this Court in *Great Northern Ry. Co.* v. *Weeks*, 297 U. S. 135.

3. The Circuit Court of Appeals for the Third Circuit has ruled in conflict with the decision of this Court in *Great Northern Ry. Co.* v. *Weeks*, 297 U. S. 135, and in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Bailey* v. *Megan*, 102 Fed. (2d) 651, in holding that the excessive valuation of railroad property for taxation resulting from a total disregard of earnings as a valuation factor does not constitute a denial of due process of law under the Fourteenth Amendment.

4. The Circuit Court of Appeals has ruled in conflict with applicable decisions of this Court in holding that these suits (a) seek to enjoin proceedings in a state court; (b) are suits against the State of New Jersey; and (c) present issues which have been previously fully adjudicated against the petitioner.

Prayer.

Wherefore, your petitioners respectfully pray that this Court issue writs of certiorari, directed to the Circuit Court of Appeals for the Third Circuit, requiring that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the records in the cases on its docket which are entitled as set forth above and numbered 7349-7354 inclusive, 7357-7362 inclusive, and 7365-7370 inclusive, October Term, 1940, respectively; that upon such review and determination, the opinion and decrees of the said Court of Appeals filed in

the above entitled cases may be reversed by this Honorable Court.

LEHIGH VALLEY RAILROAD COMPANY
DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY
ERIE RAILROAD COMPANY
NEW JERSEY & NEW YORK RAILROAD COMPANY
NEW YORK CENTRAL RAILROAD COMPANY
NEW YORK & LONG BRANCH RAILROAD COMPANY
Petitioners.

Maximilian M. Stallman

By MAXIMILIAN M. STALLMAN
Counsel.

Certification.

I hereby certify that I am a member of the Bar of the Supreme Court of the United States; that I am Counsel for the petitioners in the above entitled cause; that the foregoing petition has been prepared in accordance with the request of the petitioners; that the allegations in said petition are true to the best of my knowledge and belief; that said petition is not made for the purpose of delay or prolongation of litigation and is, in my opinion, well founded in law and in fact, and should be granted.

MAXIMILIAN M. STALLMAN.

Maximilian M. Stallman